

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HOMELESS UNION,

Plaintiff,

v.

CITY OF BERKELEY, et al.,

Defendants.

Case No. [25-cv-04449-HSG](#)

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

Despite multiple warnings, Plaintiff Berkeley Homeless Union has repeatedly failed to comply with the Court's orders. For the reasons set forth below, this action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

I. BACKGROUND

Plaintiff filed a complaint against the City of Berkeley and several individual defendants (collectively, "Defendants") in May 2025, seeking a temporary restraining order and preliminary injunction of Defendants' efforts to relocate an unhoused encampment at Ohlone Park. *See* Dkt. No. 1 at 3. The Court denied Plaintiff's motions for a temporary restraining order and a preliminary injunction. *See* Dkt. No. 8 (denying TRO); Dkt. No. 18 (denying preliminary injunction).¹

The Court then directed Plaintiff to serve the summons and complaint on Defendants by July 11, 2025, and to file a brief discussing whether Plaintiff was entitled to a jury trial. Dkt. No. 21. Plaintiff had not submitted proof of service of Defendants by August 1, so the Court directed Plaintiff to submit a certificate of service by August 5 and scrupulously comply with all future

¹ Plaintiff filed its reply in support of its motion for a preliminary injunction after the deadline. *See* Dkt. No. 14.

1 deadlines. Dkt. No. 24. Plaintiff never complied with the Court’s order to brief the jury trial
2 issue.

3 Defendant filed a motion to dismiss. *See* Dkt. No. 25. After Plaintiff failed to timely
4 oppose or otherwise respond to the motion, the Court ordered Plaintiff to show cause why the case
5 should not be dismissed for failure to prosecute. *See* Dkt. No. 30. Plaintiff timely responded to the
6 order to show cause, stating, in effect, that it was understaffed and busy with other ongoing
7 disputes with the City of Berkeley. *See* Dkt. No. 32. Plaintiff requested additional time to file an
8 opposition. *Id.* The Court granted Plaintiff an additional week to file an opposition and reminded
9 the Plaintiff that a busy schedule did not excuse a lack of diligence in a case that Plaintiff chose to
10 bring. *See* Dkt. No. 34. The Court warned Plaintiff that failure to meet the extended deadline
11 would likely result in dismissal for failure to prosecute without additional notice. *Id.* Despite this
12 warning, Plaintiff did not file a response by the deadline.

13 II. DISCUSSION

14 The district court may dismiss a case for failure to prosecute or for failure to comply with a
15 court order. *See* Fed. R. Civ. P. 41(b). “The authority of a court to dismiss sua sponte for lack of
16 prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but
17 by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly
18 and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962).
19 “Despite this authority, dismissal is a harsh penalty and, therefore, it should only be imposed in
20 extreme circumstances.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (citations
21 omitted); *see also* Fed. R. Civ. P. 41(b) (stating that dismissal for failure to prosecute “operates as
22 an adjudication on the merits” unless the order says otherwise).

23 Courts “must weigh five factors” in determining whether to dismiss a case for failure to
24 prosecute: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
25 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
26 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *See*
27 *Ferdik*, 963 F.2d at 1260–61. Here, the Court finds that these factors weigh in favor of dismissal.
28

1 First, “[t]he public’s interest in expeditious resolution of litigation always favors
2 dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (quoting *Yourish v.*
3 *California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). That is true here. Plaintiff failed to file
4 an opposition to Defendants’ motion to dismiss and has repeatedly failed to meet court
5 deadlines. *See* Dkt. Nos. 24, 30, 34. The Court is satisfied that Plaintiff’s lack of responsiveness
6 contravenes the “public’s interest in expeditious resolution of litigation.” *See id.* This factor
7 therefore weighs in favor of dismissal.

8 Second, it is “incumbent” upon courts “to manage [their] docket without being subject to
9 routine noncompliance of litigants.” *Pagtalunan*, 291 F.3d at 642 (citing *Ferdik*, 963 F.2d at
10 1261). Moreover, “[t]he trial judge is in the best position to determine whether the delay in a
11 particular case interferes with docket management and the public interest.” *Id.* Here, Plaintiff has
12 demonstrated such “routine noncompliance” by failing to oppose the motion to dismiss and
13 comply with the Court’s orders by the deadlines set. This non-compliance has “consumed some
14 of the court’s time that could have been devoted to other cases on the docket.” *Id.* This factor also
15 weighs in favor of dismissal.

16 Third, to prove prejudice, “a defendant must establish that plaintiff’s actions impaired
17 defendant’s ability to proceed to trial or threatened to interfere with the rightful decision of the
18 case.” *Id.* (citing *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987)). “Whether
19 prejudice is sufficient to support an order of dismissal is in part judged with reference to the
20 strength of the plaintiff’s excuse for the default.” *Malone*, 833 F.2d at 131 (citation omitted). In
21 *Malone*, which involved a Rule 41(b) dismissal for failure to comply with a court order, the
22 district court found the plaintiff’s excuse for her failure to comply with the order to be
23 “groundless,” justifying dismissal. *Id.* And in *Yourish*, which also involved plaintiffs who failed
24 to obey a court order, the court concluded the defendants had suffered “sufficient prejudice” where
25 the plaintiffs had only a “paltry excuse” for why they failed to timely amend their complaint. 191
26 F.3d at 991–92. Here, Plaintiff has failed to oppose the motion to dismiss and obey the Court’s
27 orders, and its excuse for noncompliance—its purportedly busy schedule—was
28 unsatisfactory. This factor therefore weighs in favor of dismissal.

Fourth, the Court has attempted to avail itself of less drastic alternatives that have proven ineffective in advancing the case. The Court warned Plaintiff to comply with future deadlines after it failed to timely submit proof of service. *See* Dkt. No. 24. The Court then entered an order to show cause when Plaintiff failed to respond to the motion to dismiss, expressly warning Plaintiff that its case was at risk of dismissal for failure to prosecute and giving it a week to respond. *See* Dkt. No. 30; *Ferdik*, 963 F.2d at 1262 (holding that warning a party that his failure to obey the court’s order will result in dismissal can satisfy the “consideration of alternatives” requirement). And despite an unsatisfactory response, the Court then granted Plaintiff an additional week to file its opposition to Defendants’ motion to dismiss, explicitly warning Plaintiff that it would likely dismiss the case if Plaintiff missed the extended deadline. *See* Dkt. No. 34. This factor therefore weighs in favor of dismissal.


Lastly, while “[p]ublic policy favors disposition of cases on the merits,” such that “this factor weighs against dismissal,” Plaintiff is not precluded from litigating these claims when it is prepared to do so in compliance with the Court’s orders. *See Pagtalunan*, 291 F.3d at 643.

III. CONCLUSION

Because four of the five factors weigh in favor of dismissal, the Court finds that dismissal of Plaintiff’s case for failure to prosecute is appropriate. The Court thus **DISMISSES** this case without prejudice to renewal under Fed. R. Civ. P. 41(b). This Order **TERMINATES AS MOOT** Defendants’ motion to dismiss, Dkt. No. 25. The Clerk shall enter judgment in favor of Defendants and close the case.

IT IS SO ORDERED.

Dated: September 15, 2025


HAYWOOD S. GILLIAM, JR.
United States District Judge